

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Matter of)
)
Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)
)
Rate Regulation)

MM Docket 92-266

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To: The Commission

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS IN PARTIAL OPPOSITION TO PETITION FOR RECONSIDERATION

Ad Hoc Rural Consortium ("ARC"),¹ by its counsel and pursuant to Section 1.429(f) of the Commission's Rules, 47 C.F.R. § 1.429(f), hereby submits comments generally supporting the Petition for Reconsideration filed June 21, 1993 by the Community Antenna Television Association, Inc. ("CATA") and the Petition for Reconsideration filed June 21, 1993 by the Coalition of Small System Operators ("Coalition"). In support of this these comments, the following is shown:

BACKGROUND

ARC is an alliance of rural telephone companies which provide cable service to their communities pursuant to Section 613(b)(3) of the Communications Act of 1934, as amended. ARC companies serve sparsely populated, primarily rural areas, which otherwise may not have access to cable service or, at a minimum, would have been slow to receive cable service.

¹ ARC is comprised of the following companies: Moultrie Telecommunications, Inc., Lovington, Illinois; RGA Cable, Toledo, Washington; Cross Cable Television, Inc., Warner, Oklahoma; Waitsfield Cable, Waitsfield, Vermont; Images Cablevision, Inc., Ochelata, Oklahoma; and Sugar Land Telephone Company, Sugar Land, Texas.

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On January 27, 1993, ARC submitted Comments in response to the Commission's Notice of Proposed Rulemaking, MM Docket No. 92-266, FCC 92-544, concerning the implementation of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"). ARC submitted reply comments on February 11, 1993. In those pleadings, ARC supported the Commission's suggestion that it could exempt small systems from its rate regulation by adopting a presumption that rates of small systems are lawful. ARC supports the petitions of CATA and the Coalition to the extent they propose exemption of small systems from the burden of rate regulation.

CATA's Petition for Reconsideration ("CATA Petition") implored the Commission to amend its benchmark system of rate regulation which was, in theory, developed to ease the regulatory burdens imposed on small cable systems. Specifically, CATA recommended that the Commission exempt all small cable systems² from rate regulation. CATA Petition, at iii. In the alternative, CATA urged the Commission to adopt rules for small systems that are less complicated and more flexible. *Id.* Regulatory measures suggested by CATA included regulation according to a range of profitability or by a system of comparing rates to a national mean of rates. *Id.* Finally, CATA requested that the Commission develop a system where price caps would not apply to small systems and where small systems could pass through to subscribers costs associated with expansion and provision of new service. *Id.*

The Coalition's Petition for Reconsideration ("Coalition Petition") went to great lengths to describe the shortcomings of the benchmark system, from research to development to implementation. Coalition Petition, at iii-iv. The Coalition's solution to the deficiency of the

² Small cable systems are those with one-thousand or fewer subscribers. *See* Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 623(i), 106 Stat. 1460 (1992).

benchmark system is to allow small systems to show that their rates are reasonable by a simple net-income analysis. *Id.* at iv. Under the Coalition's proposal, small systems surpassing a set net income should be allowed to rely on newly developed benchmarks. *Id.* at v. The Coalition also urges the Commission to exempt small systems from revising their charges for equipment, or to unbundle equipment not currently the subject of a separate charge. *Id.* Finally, the Coalition wants the Commission to allow small systems to pass through inflation and exogenous cost increases incurred since September 1992.

BENCHMARKS

As noted, CATA proposed exempting small systems from rate regulation, or, in the alternative, minimizing rate regulations imposed on small systems. CATA Petition, at 5-6. The Coalition's proposal was to simplify the system of regulating small systems' rates. Coalition Petition, at 2. ARC takes CATA's and the Coalition's proposals one step further. ARC urges the Commission to totally exempt small systems from the overwhelming burdens of rate regulation by adopting a presumption that the rates of such systems are reasonable.

Congress has explicitly ordered the Commission to reduce the burdens created by rate regulations imposed on small cable systems. Specifically,

[i]n developing and prescribing regulations pursuant to [section 623], the Commission shall design such regulations to reduce the administrative burdens and cost of compliance for cable systems that have 1,000 or fewer subscribers.

Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 623(i), 106 Stat. 1460 (1992). The benchmark system developed by the Commission falls far short of its congressional mandate. In fact, as stressed in the Coalition's Petition, "the

Commission's regulatory program...imposes enormous administrative and financial burdens on small system operators." Coalition Petition, at 3. CATA agrees, noting that "the system developed by the Commission is surely far more complicated than anyone had envisioned." CATA Petition, at 2.

CATA's and the Coalition's assessments of the benchmark system are keenly accurate. In the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq*, Congress found that "uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses."³ Under the current benchmark system, small cable operators must make calculations on a franchise-by-franchise basis to determine whether they are complying with the benchmarks. This system requires small operators to fill out hundreds of worksheets and inventory thousands of pieces of equipment--tasks that are extraordinarily time consuming and costly.

The Coalition proposes to avoid the heavy burden imposed on small systems under the benchmark system by applying a simplified, three-level regulatory process:

(1) A small system would begin by comparing its net income to its gross revenues, with the analysis being made on a system-by-system basis, or consolidated accounting basis. If the system's net income was determined to be less than a specified percentage of its gross revenues, the system's rates would be declared reasonable *per se*. Coalition Petition, at 12.

(2) However, if the system's net income surpassed a specified percentage of its gross revenues, the system would be required to adhere to a benchmark or cost-of-service

³ Regulatory Flexibility Act, Section 1(a)(3).

analysis. Coalition Petition, at 14. The benchmark analysis, however, would be targeted toward small systems. *Id.*

(3) If the system's rates exceeded the benchmark, the system would have the option of undergoing a cost-of-service analysis.⁴ Coalition Petition, at 18.

The difficulty in complying with the Coalition's three-tier solution is comparable to the problems small systems face in adhering to any rate regulation: the analysis involves a determination of what costs must or may be included when determining a system's "net income" before comparing the figure to its "gross revenues." Although, under the Coalition's proposed solution, "there would be no examination of per channel costs, no unbundling of equipment, and no distinction between regulated services and unregulated services,"⁵ the analysis still involves time-consuming and costly analyses of what constitutes net income and gross revenues. In essence, the Coalition proposal still imposes the burden of rate of return regulation upon small systems. This is because net income is determined by subtracting recoverable costs from gross revenues. Under traditional rate of return regulation, the Commission was required to determine what investments and other costs could be included in the "rate base" upon which the carrier was entitled to earn a specific rate of return. Under the Coalition's proposal, the Commission would be required to determine which costs could be subtracted from gross revenues to determine "net profit." Cable operators would have the incentive to reflect high costs in order to reduce the net profit reported to the Commission. Thus, the Commission would need to determine which

⁴ The Coalition did not elaborate more on the cost-of-service analysis because it stated that it plans to file comments on Further Notice of Proposed Rulemaking to be released by the Commission with respect to the issue. Coalition Petition, at 18.

⁵ Coalition Petition, at 12.

costs are "allowable" and operators would be required to determine where their costs "fit" in the system. Unlike telephone common carriers, cable operators have not been subject to rate regulation and therefore do not have ready access to properly segregated cost data.⁶ Exempting small cable systems from rate regulation altogether would solve the remaining unanswered problems. Moreover, it would further the intent of Congress by significantly reducing regulatory burdens imposed on small systems.

CATA's first proposal to ease the regulatory burden on small systems is to exempt small systems from rate regulation--a proposal ARC wholeheartedly endorses. CATA notes that "[a]lthough the Commission has a responsibility to ensure that subscribers to all systems be protected from unreasonable rates, it is entitled to make certain presumptions based on the unique character of the class of systems with fewer than 1000 subscribers." CATA Petition, at 5-6. CATA points out that neither Congress nor the Commission has any evidence that small systems take unfair advantage of their market position. *Id.* at 6. Rather, small systems are "creatures of their communities" where they have engendered good will as a result of good service, not predatory pricing. *Id.* Finally, CATA concludes by stating that "relieving [small

also reasonable, but, in the opinion of ARC, still falls short of Congress' mandate of relieving small systems from the enormous burdens imposed by the benchmark system. Once again, use of a benchmark system, even if it is simplified, still requires small systems to undergo time-consuming and costly analyses to comply with the benchmarks.

SMALL SYSTEMS SHOULD BE EXEMPT FROM RATE REGULATION

The primary thrust of the 1992 Cable Act is the stabilization of cable rates and the prevention of unwarranted cable rate increases. Small systems, particularly exempted rural telephone companies, rarely encounter "effective competition." Rather, these small systems provide cable service to subscribers who would otherwise not have cable because of the extraordinary costs associated with providing the service to rural areas.

The Commission has recognized that rural telcos that provide cable service serve the public interest by encouraging the extension of cable service into areas which otherwise may go unserved due to the extraordinary high per-subscriber costs, or, at least, may encounter substantial delays in receiving cable service. The adoption of the benchmark system clearly increases the cost of providing cable service to the subscribers--a cost that is already notably higher than costs faced by larger cable companies. As the cost of compliance with regulations increases, so does the chance that small systems could no longer afford to provide the service to rural subscribers. Thus, a presumption that small systems' cable rates are lawful is necessary to ensure that rural subscribers continue to receive cable service.

As recognized by the Commission in its NPRM, small system operators face relatively higher per-subscriber costs due to the high cost of construction in sparsely populated

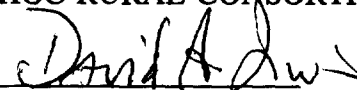
areas and the small customer base over which to spread these costs. There is no question that benchmarks impose even higher costs upon small systems. However, the benefit of benchmarks is questionable.

Recognizing the problems small systems face in providing cable service to rural areas, the Commission is urged to implement Section 623(i) of the Communications Act of 1934, as amended, by establishing a presumption that, absent a showing to the contrary, small systems have just and reasonable and otherwise lawful rates.

CONCLUSION

WHEREFORE, the premises considered, ARC requests that the Commission exempt small system cable operators from the regulatory burdens imposed by rate regulation.

Respectfully submitted,
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July 26, 1993

CERTIFICATE OF SERVICE

I, Lorena L. Ferry, hereby certify that on this 26th day of July, 1993, copies of the foregoing "Comments in Partial Opposition to Petition for Reconsideration" have been served either by hand delivery or first-class United States mail, postage prepaid, upon the following:

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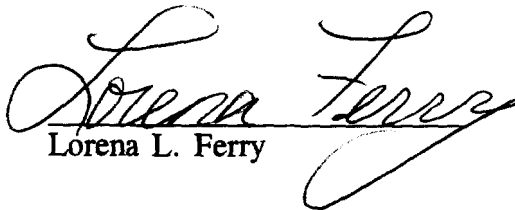
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